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January 4, 2005

Mary L. Cottrell, Secretary  
Department of Telecommunications & Energy  
Commonwealth of Massachusetts  
One South Station, 2<sup>nd</sup> Floor  
Boston, Massachusetts 02110

**Re: D.T.E. 03-59, 03-60 – Implementation of Triennial Review Order  
D.T.E. 04-73 – M.D.T.E. Tariff No. 17 (re Enterprise Switching)**

Dear Ms. Cottrell:

I write on behalf of Verizon Massachusetts (“Verizon MA”) in connection with two orders issued by the Department on December 15, 2004. In the Order Denying Motion of Verizon Massachusetts for Partial Reconsideration (entered in D.T.E. 03-59-B) and in the Consolidated Order Dismissing Triennial Review Order Investigation and Vacating Suspension of Tariff M.D.T.E. No. 17 (entered in DTE Nos. 03-60 and 04-73), the Department found that where Verizon MA offers enterprise switching on generally available terms and pursuant to Section 271 of the 1996 Telecom Act, enterprise switching would constitute “common carriage,” and Verizon MA would be required to file a Massachusetts tariff for the service. The Department noted, however, that “Where the service is offered through individually negotiated contracts, and no uniform common carriage rate is made generally available, then no obligation to file a uniform tariff may arise.” D.T.E. No. 03-59-B, at 9.

Verizon MA disagrees with the Department’s general finding that a state tariff is required for any service offered on generally available terms. Neither M.G.L. c. 159, §19 nor any other state law can be read to support such a result. As the Department has recognized for many years, services that are within the jurisdiction of the FCC are not subject to the state tariff filing requirement. Services provided by Verizon MA in

Mary L. Cottrell, Esq.

January 4, 2005

Page 2

Massachusetts solely on account of Section 271 of the Act also fall within the jurisdiction of the FCC and thus outside the ambit of the state tariff statutes. The fact that the Telecommunications Act limits state tariff authority has been expressly found by two United States Courts of Appeal. *See Verizon North Inc. v. Strand*, 309 F.3d 935 (6th Cir. 2002); *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441 (7<sup>th</sup> Cir. 2003). Although these decisions address state tariffing requirements related to Section 251(c) arrangements, the rationale given by the courts for invalidating state tariffs are no less applicable in the Section 271 context, where the FCC has concluded that carriers are to negotiate such arrangements, the terms are governed by federal-law standards, and enforcement is at the FCC.

In any event, the issue is academic at this point, because Verizon MA intends to offer enterprise switching and other Section 271 arrangements in the state solely through individually-negotiated contracts based on the particular circumstances, needs and requirements of the carrier customers. Consequently, consistent with the Department's conclusion that a tariff is not required where the service is offered through individually negotiated contracts, Verizon MA has no obligation to file a tariff with the Department for enterprise switching and other Section 271 elements. (Verizon MA may choose in the future to offer these elements on generally available terms. With that in mind, Verizon MA reserves its right to contest the Department's ruling that Verizon MA must file a state tariff for any services offered on generally available terms and pursuant to Section 271.)

Sincerely,

/s/Bruce P. Beausejour

Bruce P. Beausejour

cc: Andrew Kaplan, Esquire  
Michael Isenberg, Director-Telecommunications Division  
Paula Foley, Esquire  
April Mulqueen, Assistant Director-Telecommunications Division  
Jesse Reyes, Esquire  
Service Lists (D.T.E. 03-59, 03-60 and 04-73)